IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.479 OF 2005

Gopal Ramchandra Ratnaparkhi .. Appellant

Versus

Champabai Baburao Khot & Ors. .. Respondents.

Mr.A.M.Kulkarni for appellant

Mr.Anil Borkar h/f A.P.Kulkarni for respndents

CORAM : P.V.KAKADE, J.

DATE : 1ST JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Sangli dated 26.8.2004 dismissing the appeal and confirming the Order passed by Joint Civil Judge, Junior Division, Sangli dated 30.4.1994 decreeing the plaintiffs' suit for declaration and possession.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs filed the suit for redemption of mortgage in respect of property bearing Plot No.493, City Survey No.1549 on the ground that husband of plaintiff no.1 and father of plaintiff 2 to 4 namely Baburao Ramgobda Khot was predecessor in title of the suit property. Whereas Baburao Khot died on 10.10.1974 leaving behind wife i.e. plaintiff no.1 and three daughters i.e. plaintiff nos.2 to 4. It was further alleged that in the life time of predecessor in title of the suit property Baburao Khot mortgaged the property to defendant no.1 for Rs.5250/= and thereafter he again obtained Rs.1000/- and executed another mortgage deed in favour of Gat No.1. Both these mortgage deeds came to be registered on 14.3.1968 and 1.11.1968 for total amount of Rs.6250/=. The plaintiffs allegedly approached the defendant no.1 with the mortgage amount requesting to accept the said amount and redeem the property, however, defendants declined to do so, obviously, due to the reason that those properties were located in prime area and hence she avoided to redeem

the mortgage. Hence the suit came to be filed.

4. The defendant no.1 challenged the suit on various grounds mainly contended that he was tenant in the suit property. It was further contended that as per the decree and judgment in R.C.S.No.53 of 1969 and Regular Darkhast No.179 of 1970 auction sale of the suit property took place and one Laxman Ambalal Shah purchased the property in auction sale and as such plaintiff No.1's husband or plaintiff's title and interest as owner of the suit property is no more in existence and hence the suit was not maintainable and, therefore, it was sought to be dismissed.

5. The learned trial judge adjudicated the dispute on merits and came to the conclusion that factum of transaction of mortgage was proved at the foot of suit transactions dated 14.3.1968 and 1.11.1968 in respect of suit property. Further it was held that plaintiffs had proved that defendant no.1 put defendant nos.2 and 3 illegally in possession of some of the portion of the suit properties of deceased Baburao. The court further held that defendant no.1 failed to prove that he was tenant in the suit property and as such the suit for

redemption of mortgage came to be decreed.

. The appeal was carried to the District Court. The learned Additional District Judge, Sangli after hearing both the parties came to the conclusion that the findings recorded by the trial court were legal and proper and thus dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that the only question of law sought to be raised at this stage is whether the alleged right of tenancy in the suit property since prior to the mortgage was sufficient to protect the possession of the defendant no.1 or not? In support of his submission the learned counsel for the appellant sought to rely upon various rulings of the Supreme Court and canvassed that defendant no.1 was tenant in the suit property and as such his possession was protected. It was further submitted that the lease of a property is a very valuable right, and therefore, its implied surrender would not be readily inferred, as sought to be established on behalf of the plaintiff. The ratio laid down by the Supreme Court in various rulings cited are enough to show that in all the said

cases the factum of tenancy either was proved or was established sufficiently. However, these rulings are not applicable to the case in hand due to the reason that there is no iota of evidence on record to show that there existed any tenancy right in favour of defendant no.1 since prior to the mortgage. The perusal of the judgment of the lower appellate court is clear enough to show that it has concluded that the pleadings of the appellant regarding his tenancy was quite evasive without disclosing the supporting aspects viz. month and agreed rent and such other details as required to support such contention regarding tenancy. The pleading in the written statement of the present appellant were also brought to my notice and I am satisfied that there is only vague reference to the alleged right of tenancy without disclosure of any fact and factual details in support of such plea nor there is any attempt to lead evidence in that regard. In fact record shows that first mortgage dated 14.3.1968 is not produced at all and consequent mortgage dated 1.11.1968 is of no use to arrive at conclusion as to whether the appellant had surrendered his right as lessee at the time of mortgage deed. Therefore, in absence of such evidence it cannot be said that the defendant no.1 was a tenant in the suit

property and had right in that capacity qua the suit property. There are no other substantial questions of law involved in this appeal and as such I hold that there is no merit in the appeal and hence the appeal stands dismissed. Consequently the Civil Application No.151 of 2005 also stands dismissed.

. At this stage the learned counsel for the appellant prays for stay of the order. In view of the facts and circumstances the order stands stayed for six weeks.

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